

Hydraulic Project Approval Task Force



Report to the Washington State Legislature

November 27, 2002

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Signatures*

As directed in Engrossed Substitute Senate Bill 6387, Section 307 (23) passed by the 2002 Legislature, Washington Department of Fish and Wildlife (WDFW) created the Hydraulic Project Approval (HPA) Task Force to review WDFW's HPA program. We respectfully submit the report of our findings and recommendations to the Legislature.

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* Original document signed by Chair and Task Force members

Acknowledgements

The HPA Task Force would like to thank the following people for their assistance to us in accomplishing our work: Representative Phil Rockefeller, Washington State Legislature; Kelly White, and Ron Ozment, Fish and Wildlife Commission; Gregor Myhr, Washington Department of Transportation; Bev Poston, Washington Department of Ecology; Carol Cloen, Washington Department of Natural Resources; Greg Hueckel, Peter Birch, Steve Penland, Josh Weiss, Gayle Kreitman, John Broome, Kristin Grewell and Pat Chapman, Washington Department of Fish and Wildlife; Vicki King, Triangle Associates and 15 anonymous Washington Department of Fish and Wildlife Habitat Program staff that provided comments to the HPA Task Force at our request.

Executive Summary

- The HPA Task Force identified priority issues affecting the HPA program. Given the short time available for review and development of recommendations, however, only six of these were addressed:
 - Consistency
 - Streamlining
 - Compliance
 - Training
 - Fees
 - Stormwater
- **HPA Task Force Recommendations**
 - **Consistency - Institutional/Organizational/Legal Standard** - WDFW should provide institutional structure, training, and accountability to ensure that it interprets and applies its statutory responsibilities, codes, and operating policies and procedures in a consistent manner while fulfilling its mandate to "*ensure the proper protection of fish life*" (RCW 77.55.100). We recognize that different in-water work windows are authorized by Hydraulic Code rules (WAC 220-220-010, and 220-110-032) and are appropriate to protect fish life in different settings and as part of different types of project actions. An appropriate method/approach should be developed to determine what flexibility is appropriate or desirable.
 - **Consistency – Tracking** - WDFW should develop a tracking program that allows for the quantification of HPA statistics as well as analysis of impacts and mitigation authorized in HPAs as may be feasible. WDFW should assure that whenever possible and practical to do so projects are described in quantitative terms that could be tracked through a permitting database.
 - **Consistency – Appeals of HPA Actions** - All formal appeals arising from the approval, denial, conditioning, or modification of an HPA by WDFW should be the exclusive jurisdiction of the Hydraulics Appeals Board (HAB). Given the current volume of formal appeals, this would cause an approximate doubling of the HAB HPA appeal workload, but would not result in significant fiscal or staffing impact, according to the HAB. No change should be made to the informal appeal procedures.
 - **Streamlining – Technical Assistance** - WDFW should take steps to create a more user-friendly application process.
 - **Streamlining – Inconsistent Application of HPAs** - WDFW management should provide clear direction to staff regarding legal authorities and policies.
 - **Streamlining – Regulatory Overlap** - To alleviate the burden of regulatory overlap on project proponents and staff, WDFW should address sequencing of

- multiple permits; make “coordinated permitting process” work; reduce time in the HPA process; create common mitigation solutions between agencies; use equivalent regulatory reviews and permits where appropriate; delineate regulatory jurisdictional standards; establish accountability standards to access and reduce regulatory overlap; and ensure compliance and effectiveness of the program.
- **Compliance** - WDFW should reorganize the HPA program to create a compliance section of staff dedicated to monitoring compliance with permits issued by a separate permit-writing staff.
 - **Training** - WDFW must institute internal changes to ensure that staff is effectively trained and that communication horizontally and vertically within WDFW is improved. A mandatory, ongoing training program for Habitat and Enforcement program staff should be established and maintained. WDFW should institute standard procedures that require supervisor approval for deviation from them, and a quality assurance and quality control program should be implemented to ensure that training improvements are maintained.
 - **Fees** – The HPA Task Force could not reach consensus on whether fees should be charged for HPAs, but did agree that, if the Washington State Legislature determined that fees are appropriate, fees should not be assessed to recover the full costs of administering the Hydraulic Code. The HPA Task Force identified arguments for and against fees for HPAs as well as parameters for a fee structure and schedule. There being no consensus on fees, the Chair included an example of a fee structure and schedule generated by WDFW staff in Appendix B.
 - **Stormwater** – WDFW should develop partnerships with Washington Department of Ecology (Ecology) and local governments that use a mix of existing programs to protect fish. WDFW and Ecology should use their technical assistance resources to help local governments achieve fish protection through their local stormwater programs.

Brief History of the Hydraulic Code (Chapter 77.55 RCW)

Salmon, herring, smelt, sturgeon, crab, and other fish resources rely on nearshore waters for feeding, breeding, and rearing offspring. These same waters, often along shorelines, river banks, or estuarine wetlands, are often in the path of commerce, transportation, farming, and other activities. As a result, construction and other projects which affect the bed or flow of state waters can have negative impacts on fish resources living in those waters if the projects are not conducted correctly. Among other impacts, riparian habitats can be lost and sediment can be discharged into streams and lakes resulting in smothering of eggs or fry. In-water structures and features of the shoreline can be altered so that they no longer offer feeding areas or cover from predators. Fish can be frightened away from their spawning areas. Habitat can be permanently lost.

In 1949, the Washington State Legislature recognized the need to protect fish and fish habitat from the impacts of hydraulic projects. Through RCW 77.04.012, WDFW is mandated to “*conserve the wildlife and foodfish, game fish, and shellfish resources in a manner that does not impair the resource.*” The Legislature enacted into law the requirement that anyone constructing any form of hydraulic project that would use, divert, obstruct or change the natural flow or bed of any river or stream or utilize any waters of the state must obtain a Hydraulic Project Approval (HPA) from the Department of Fisheries or the Department of Game before commencing work. The statute was known as the Hydraulic Code. Over the years, subsequent Legislatures have enacted changes to the Hydraulic Code to clarify, modify or restrict its scope, but have never abolished it. In 2000, after the merger of the Departments of Fisheries and Wildlife into the Department of Fish and Wildlife, the Hydraulic Code was recodified into Chapter 77.55 RCW.

Listed below is a synopsis of the passage of and major changes to the Hydraulic Code.

- 1949 Hydraulic Code enacted. Need HPA before using, diverting, obstructing, or changing flow or bed of any river or stream, or utilizing any waters of the state.
- 1955 Recodified as RCW 75.20.100.
- 1967 Violation provision added.
- 1977 Defined “bed”; emergency HPA provision added.
- 1983 Entire Fisheries Code was recodified. Salt waters included in Hydraulic Code; Fisheries and Game Department responsibilities clarified; 45-day review deadline added; limited to protection of fish life.

- 1986 Agriculture HPAs created; Hydraulics Appeals Board formed; civil penalties added.
- 1991 Marine bulkhead HPA provisions added.
- 1995 Aquatic Plants and Fish pamphlet required.
- 1996 Marina maintenance HPA provisions added; streamlined permit process created for watershed restoration projects.
- 1997 Gold and Fish pamphlet required.
- 1998 Streamlined permit process for fish habitat enhancement projects created; Fish and Wildlife Enforcement Code (Chapter 77.15 RCW) created to combine Fisheries and Wildlife Department enforcement statutes.
- 1999 Forests and Fish program adopted in SHB 2091.
- 2000 Fisheries and Wildlife codes merged, numbers changed to Title 77 RCW.
- 2002 Stormwater and other provisions passed in ESHB 2866.

Prior to 1983 no agency rules existed to administer, interpret or clarify the Hydraulic Code. That changed when the first Hydraulic Code Rules (Chapter 220-110 WAC) were adopted in 1983. These were subsequently modified, with the last major update occurring in 1994. New rules for control of aquatic noxious weeds and for mineral prospecting were added in 1997, and 1998. Subsequent changes to the Hydraulic Code have not resulted in corresponding changes to the Hydraulic Code Rules.

Today, the Hydraulic Code and the associated Hydraulic Code Rules provide WDFW with a regulatory mechanism to protect fish life and their habitat from the impacts of most hydraulic projects and to recognize the habitat benefits associated with various actions as well. The Hydraulic Code requires *that “in the event that any person or government agency desires to construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, such person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure the approval of the department as to the adequacy of the means proposed for the protection of fish life.”*

WDFW’s authority extends only to the protection of fish life. Fish life is broadly defined in the Hydraulic Code Rules to be *“all fish species, including but not limited to food fish, shellfish, game fish, and other nonclassified fish species and all stages of development of those species”*. Furthermore, “protection of fish life” is defined in the rules to mean *“prevention of loss or injury to fish or shellfish, and protection of the habitat that*

supports fish and shellfish populations”. Even though other animals such as amphibians, reptiles or birds may be impacted by hydraulic projects, the Hydraulic Code is specific to fish life and HPAs may not be conditioned to protect species other than fish. Measures to protect fish life imposed in HPAs often have multi-species benefits, though, because many species share the same habitat.

Hydraulic project proponents must apply to WDFW for authorization to conduct their projects. With the exception of emergency projects and pamphlet HPAs, which may be applied for verbally, applications must be submitted in writing. Processing time for complete applications is mandated by statute to be no greater than 15-days for expedited projects and 45-days for standard projects. Projects declared to be emergencies by county legislative authorities or by WDFW must be granted approval immediately upon request.

The number of HPAs issued or denied varies annually, but has averaged nearly 6,200 for the last decade ([Table 1](#)). Recent trends show a decline from this average due to a greater reliance on programmatic and pamphlet HPAs, which reduce the number of individual HPAs issued while still offering adequate protection of fish life. Further reduction is expected as the department continues to engage in innovative permit streamlining efforts, such as the Transportation Permitting Efficiency and Accountability Committee (TPEAC) for Washington Department of Transportation projects.

Another factor that influences the number of HPAs issued is flooding. Typically major flood events generate the need for a significant number of emergency HPAs to be issued for bank protection and associated projects.

Table 1. HPAs Issued, 1990 - 2001

Year	Non-emergency	Emergency	Denials	Modifications	Total
1990	4651	273	66	1142	6132
1991	5365	166	31	1351	6913
1992	4983	48	38	1343	6412
1993	5056	38	28	1315	6437
1994	4839	52	47	1032	5970
1995	4672	175	46	1354	6247
1996	6047	438	32	1526	8043
1997	5315	319	36	1620	7290
1998	4225	141	60	1286	5712
1999	3797	139	351	1100	5387
2000	3023	64	39	943	4069
2001	4469	71	46	1162	5748
Total	56442	1924	820	15174	74360
Average	4704	160	68	1265	6197

The number of HPAs issued also varies by WDFW region. Because most hydraulic projects occur in or near populated areas, the regions encompassing Puget Sound receive the most applications and issue the most HPAs ([Table 2](#)).

Table 2: Average Percentage HPAs issued by WDFW Regions

WDFW Region	Average % of Total HPAs Issued, 2000-2001
1 – Eastern	10.0
2 – North Central	3.5
3 – South Central	4.5
4 – North Puget Sound	40
5 – Southwest	12
6 – Coastal	30

WDFW has estimated the HPA program, which includes field and headquarters biologists and supervisors, engineers, support staff, attorneys and enforcement personnel, to be budgeted at approximately \$10 million per biennium to administer ([Table 3](#)).

Table 3. Current Budget of HPA Program

Staff	Number of Staff	% of Time On HPAs	Yearly Per FTE On HPAs	Biennium Totals
Area Habitat Biologist	44	77	\$59,170	\$5,206,960
Field supervisor	6	72	\$60,998	\$731,976
Forests & Fish Biologist	7	72	\$55,328	\$774,592
Regional Habitat Prog. Manager	6	41	\$42,574	\$510,888
Olympia HPA staff	2.3	100	\$84,419	\$388,327
Information Services (data)	2	100	\$43,956	\$175,824
Environmental Engineers	9	30	\$30,096	\$541,728
Supervision, policy support	4	40	\$46,589	\$372,712
Admin. Law Judge (appeals)				\$30,000
Atty. General Office (legal)				\$200,000
WDFW legal				\$1,500
Enforcement	7	1,662	\$77,935	\$1,091,090
		(Hours/FTE)		
BIENNIUM TOTAL				\$10,025,597

Notes:

- Yearly per FTE includes salary, benefits, travel, supplies, and overhead only for HPA work
- Regional numbers based on an August 2002 survey of all RHPMs; weighted averages were computed
- Field supervisors issue HPAs and assist with HPA issues
- Forests and Fish Biologists issue HPAs
- RHPMs and Olympia supervisors address HPA issues and provide direct support
- Environmental Engineers provide technical assistance to HPA applicants and AHBs
- Supervision, policy support based on a weighted average
- ALJ estimate based on 6 appeals/year, \$2,500 per appeal
- AGO estimate provided by AGO
- HPA/Hydraulic Compliance is one of the activities identified in Enforcement's cost accounting. Based on cost accounting figures, Enforcement expends approximately \$545,000 annually to ensure HPA/Hydraulics compliance. This expenditure equates to approximately 7 FTEs statewide.

Legislation Requiring the HPA Task Force

Among proposed legislation in the 2002 Legislative Session, House Bill 2757 addressed issues related to various aspects of the Hydraulic Code and WDFW's implementation of the Code. The bill would have authorized WDFW to charge fees for HPAs and would have required the agency to establish an advisory committee to assist in the development and implementation of an alternative permit program, to advise on ways to improve the HPA program and to make recommendations on the level of fees the agency could collect for HPAs.

House Bill 2757 did not pass, but the concepts in the bill survived in another form. The Washington State supplemental budget passed by the 2002 Legislature directed that *"The department [Washington Department of Fish and Wildlife] shall establish a hydraulic project approval program technical review task force. The task force shall be composed of a balanced representation of both hydraulic project proponents and conservation interests. The task force shall conduct a thorough evaluation of the hydraulic project approval program and make recommendations to the legislature by November 30, 2002, based upon its evaluation. The task force recommendations shall include a potential fee structure and schedule for hydraulic project approval permits"* (Engrossed Substitute Senate Bill 6387, Section 307 (23)).

In addition, the Governor, as part of his partial veto of Engrossed Substitute House Bill 2866, stated, *"The supplemental operating budget includes a provision requiring WDFW to establish a hydraulic project approval (HPA) program technical review task force. This task force is to conduct a thorough evaluation of the HPA program and make recommendations to the legislature by November of this year. I am requesting that this task force also address the question of the overlap of statutory requirements and local programs, to determine whether they adequately address impacts covered by the HPA process. There is an opportunity to streamline these processes and clarify regulatory authority. However, we must make these improvements in a manner that will protect critical salmon habitat, and maintain the ability of our state agencies to provide such protection. I expect that the HPA task force will make recommendations to accomplish this."*

HPA Task Force Makeup and Process

In June 2002, Fish and Wildlife Commission Chair Russ Cahill was selected to Chair the HPA Task Force. In an effort to obtain a balanced membership, he sent a letter to stakeholders inviting participation in the HPA Task Force, which was to be composed of seven members representing the interests of hydraulic project proponents (Agriculture, General Business, Local Government, Mineral Prospecting, Ports and Washington Department of Transportation), and seven members representing conservation interests (Commercial Fishing, Recreational Fishing, Environmental Groups, Tribal). Additionally, he sent a similar letter to state and federal agencies with an interest in

hydraulic projects inviting them to attend and offer suggestions to the Task Force. Chair Cahill's desire was to have official voting members of the Task Force, with himself as a tiebreaker, if necessary. Other interested parties could attend and provide comments to the Task Force, but would not have voting rights during any decision-making of the Task Force.

Despite follow-up contacts with stakeholders, it proved impossible to achieve a Task Force composed of numerically balanced interests as initially envisioned. Therefore, Chair Cahill revised the makeup of the Task Force to include fewer members from project proponents and conservation interests alike, and eliminated the voting method of decision-making. While there remained official Task Force members ([Table 4](#)) and other invited agency representatives ([Table 5](#)), all participants were given an equal voice throughout the proceedings.

Table 4. HPA Task Force Members

Interest Group	Name	Representing
Chair	Russ Cahill	Washington Fish and Wildlife Commission
<i>Project Proponents</i>		
Agriculture	Robyn Meenach Lisa Brautigam (Alternate) Hertha Lund (Alternate)	WA Cattlemen's Assoc. & Farm Bureau
General Business	Kristen Sawin Willy O'Neil (Alternate)	Association of Washington Business
Local Government	Dan Wrye Phil Bakke	Pierce County Island County
Mineral Prospecting	Greg Christensen	Mineral Prospectors
Ports	Richard Gilmur Eric Johnson (Alternate)	Port of Tacoma WA Public Ports Assoc.
Washington Department of Transportation	Ken Stone Patty Lynch (Alternate)	Washington Department of Transportation
<i>Conservation Interests</i>		
Recreational Fishing	Ric Abbett Bart Madison (Alternate)	Trout Unlimited
Environmental	Lea Mitchell	Washington Environmental Council
Environmental	Bruce Wishart	People for Puget Sound
Environmental	Nina Carter Naki Stevens (Alternate)	Audubon Washington

Table 5. Invited Government Representatives

Name	Organization
Debra Wilhelmi	IAC/SRF Board
Doug Myers	Puget Sound Water Quality Action Team
Ron Schultz	Governor's Executive Policy Office
Megan White Bill Moore (Alternate)	Washington Department of Ecology
Frank Easter	USDA, Natural Resources Conservation Service
Hedia Adelsman	Environmental Hearing Office/Hydraulics Appeals Board
Jay Udelhoven Carol Piening (Alternate)	Washington Department of Natural Resources
Ed Manary	Washington Conservation Commission
Jim Skalski	Office of Financial Management
John Hollowed	NW Indian Fisheries Commission

WDFW staff ([Table 6](#)) attended all the Task Force meetings and provided information as needed or as requested by the Task Force on aspects of the HPA program. With rare exceptions, staff did not participate in the discussions of the Task Force, except when requested to provide clarification or examples by the Chair or the Task Force members. Likewise, staff did not take part in the decision making of the Task Force.

Table 6. WDFW staff attending Task Force meetings

Name	Title
Greg Hueckel	Assistant Director, Habitat Program
Peter Birch	Deputy Assistant Director, Habitat Program
John Broome	Captain, Enforcement Program
Josh Weiss	Special Assistant, Director's Office
Steve Penland	Environmental Services Division Manager, Habitat Program
Gayle Kreitman	Regulatory Services Section Manager, Habitat Program
Pat Chapman	Senior Biologist , Reg. Services Section, Habitat Program
Kristin Grewell	Senior Secretary, Habitat Program

WDFW contracted with Vicki King, of Triangle Associates, Seattle, Washington to facilitate the meetings. Ms. King had worked previously with WDFW facilitating the WDFW Director's Roundtable meetings that were conducted around Washington State in fall, 2001, so was familiar with many of the issues discussed in the HPA Task Force meetings.

Eight meetings of the Task Force were held between July 24 and November 22, 2002 in Olympia, Washington. At each meeting, the following order of business was generally conducted:

1. Welcoming remarks
2. Review and approval of last meeting minutes
3. Staff reports of Task Force data or information requests
4. Subcommittee or full Task Force discussion of various HPA issues

Initial meetings resulted in the Task Force adopting meeting ground rules and identifying all the HPA issues we felt warranted examination. Given the short time in which the Task Force had to work, however, it was clear that only a fraction of these issues could be considered. The Task Force additionally needed to address the legislatively mandated task of considering HPA fees and the Governor's request to examine stormwater issues and overlapping regulations and streamlining.

In initial meetings, we attempted to identify all the issues that are important components or problem areas of the HPA program. Although we only had time to address those issues of the highest priority, we wanted to acknowledge the importance of all of them. These are listed in [Appendix A](#). Future groups examining ways to improve the HPA program should consider these topics. They are not listed in any particular order of importance and include the priorities addressed below.

Prioritization of the initial list of issues resulted in three topics the Task Force determined to be the most important for improving the HPA program: consistency, streamlining, and compliance ([Table 7](#)). During discussions of these topics, it became clear that a common component was training. This was added as the fourth priority of the HPA Task Force.

The Task Force was divided into subcommittees, which developed recommendations regarding each of these priorities and reported their recommendations to the full Task Force for its consideration. Subcommittee recommendations for each priority were debated by the Task Force and final recommendation developed by consensus. Following consideration of these priorities, the Task Force addressed the HPA fee and stormwater issues by the same process.

Table 7. Prioritized issues raised by the HPA Task Force

Priority	Issue Raised	Total Votes
1	Streamline applications, HPAs, and appeals Avoid duplication of data, appropriate coordination Prioritize permit by level of impacts	10
2	Compliance, monitoring, enforcement, penalties	10
3	Consistency in application of HPA by WDFW staff Centralization vs. regionalization Clarify criteria	9
4	Develop mechanism to deal with cumulative impacts	6
5	Data management	6
6	Equivalency for projects that meet other regulatory requirements/permits	4
7	Improve public notification	4
8	Consider issuing more pamphlets	3
9	Review & update Hydraulic Code	2
10	Separate system for mineral prospectors	2
11	Acknowledgement that built environment is different	1
12	Avoid fees	1
13	Proprietary interests – communication with appropriate agencies	1
14	Stable, adequate financing for fish habitat – workload analysis to support funding – fee structure workload & expertise of staff in regards to stormwater	0
15	Rule revision	0

HPA Task Force Recommendations

Task Force-Identified Priorities

Consistency – Institutional/Organizational/Legal Standard

Providing effective service to permit applicants requires WDFW to offer them a level of certainty in terms of the application requirements and their expectations regarding the overall HPA permit process. Conversely, protecting fish and their associated habitats requires the ability to apply permit conditions specific to a project and the project's site. Lack of sufficient and dedicated funding, lack of checks and balances to ensure consistency within WDFW, and population growth have made it difficult for WDFW to meet these challenges effectively. In addition, since the Endangered Species Act (ESA) has become applicable to many of the State's waters, HPA applicants have expressed the belief that some Area Habitat Biologists exceed their authority to establish project work windows in HPAs beyond those authorized in Hydraulic Code rules via HPA permit conditions. These problems collectively have, at times, frustrated permit applicants, and generated permits and/or permit conditions that are not reasonably related to the potential harm or benefit that the projects may produce.

Recommendations

We recommend that WDFW provide institutional structure, training, and accountability to ensure consistent interpretation and application of its statutory responsibilities, codes, and operating policies and procedures as it works to fulfill its mandate to "*ensure the proper protection of fish life*" (RCW 77.55.100). We recognize that different in-water work windows are authorized by Hydraulic Code rules (WAC 220-220-010, and 220-110-032) and are appropriate to protect fish life in different settings and as part of different types of project actions. An appropriate method/approach should be developed to determine what flexibility is appropriate or desirable.

The following actions should be taken by WDFW to achieve greater consistency in the application of the Hydraulic Code:

- Take action to ensure consistent interpretation and application of the statute to provide efficient services to permit applicants and protect fish life. These actions must include increased oversight through a higher level of regional and headquarters review of draft HPAs.
- The Fish and Wildlife Commission shall update written policy guidance to WDFW staff on how to assess the impacts of hydraulic projects and to issue or deny HPAs. Policy guidance should be available to applicants.
- Increase the training and mentoring of field staff, and improve communication of information and expectations at all levels.
- Establish a written Quality Assurance and Quality Control program to assess the effectiveness and efficiencies of WDFW's administration of the HPA program.

- Develop, with stakeholder involvement, consistent guidance for establishing in-water work windows. When determining appropriate in-water work windows for geographical areas, project sites, or types of projects, consider the presence, or absence of fish and various in-water construction activities and their impact pathways.
- Conduct rulemaking to make changes to the Hydraulic Code Rules (Chapter 220-110 WAC) to:
 - o Clearly establish the jurisdiction of the HPA program. In doing so, the Task Force recommends that the Fish and Wildlife Commission consider the following questions:
 - Does the project or activity affect fish life? If so,
 - Is the project or activity sufficiently regulated by another regulatory program to protect fish life? Where redundancy is identified between HPAs and other permits, establish a process in which a lead agency is identified to streamline the permitting process.
 - o Reflect RCW changes that have occurred since the last major rules update in 1994 but have not yet been incorporated into rules.
 - o Incorporate procedures to implement ESHB 2866 designed to eliminate overlap between HPAs and stormwater regulations, if needed.
- Be clear with staff that rulemaking is the prerogative of the Fish and Wildlife Commission and that permit conditions derive from statute law and regulation.

Consistency – Tracking

There is an insufficient ability to track all parameters related to the issuance of HPAs because WDFW lacks a sufficient database. Simple data fields such as project location, type, and magnitude of authorized habitat alteration are not routinely compiled to assess the program. Adaptive management requires knowledge of the overall impact of the permitting program.

The wide variety and complexity of projects authorized by WDFW makes it difficult, if not impossible, to fully assess all aspects of the HPA projects from information contained in a database. Certain parameters can be appropriately quantified in a database, others cannot; therefore caution must be exercised when extracting information and drawing conclusions. We recognize that this will be an expensive undertaking, but we feel WDFW should begin phasing in the development of a database.

Recommendations

We recommend that WDFW develop an HPA tracking program that allows for the quantification of HPA statistics as well as analysis of impacts and mitigation authorized in HPAs as may be feasible given the above noted caution. WDFW should assure that whenever possible and practical to do so, projects are described in terms that can be tracked through a permitting database.

To accomplish this, we recommend that:

- Consistent data fields be included in final HPAs

- Database entry should include at least the following elements:
 - o HPA applications
 - o HPAs issued
 - o HPA issue date
 - o HPA conditions
 - o Compliance, including violations and corrective actions
 - o Performance (how long to issue permit)
 - o Customer satisfaction (or complaint)
 - o Projects underway in each watershed
 - o When application was received
 - o Site inspections
 - o Number of completed projects
 - o Number of appeals (of HPA denials or of conditions in HPAs)
 - o Outcome of appeals
- WDFW periodically compile and report tracked fields to WDFW management and the public
- WDFW adapt the HPA program based on the outcomes identified through analysis of the database
- WDFW coordinates discussions with other managers, agencies and the public on appropriate quantitative information needed to evaluate the HPA program
- Area Habitat Biologists be trained to routinely collect project information
- The data fields from completed HPAs should be processed into a geospatial database
- WDFW program managers should periodically review database reports and discuss needed policy or procedural changes. This should include the public and stakeholders
- Realize that individual permits are perceived to have adequately protected fish life at the site level
- The HPA database should be compatible with other databases compiled by WDFW and other agencies

Consistency – Appeals of HPA Actions

Currently, there is a confusing array of options for project proponents or interested parties should they wish to appeal a WDFW action on an HPA. This sometimes results in loss of appeal rights due to appealing to the incorrect venue. Inefficiencies result from having similar processes in multiple jurisdictions. Moreover, decisions on formal appeals being made by the agency which originated the action being appealed presents a perceived, if not actual, conflict of interest.

The Hydraulics Appeals Board (HAB) has the exclusive jurisdiction for formal appeals of a small number of HPA types: agricultural projects (RCW 77.55.10), marine beachfront protective bulkheads (RCW 77.55.200), off-site mitigation (RCW 77.55.230) and fish enhancement projects (RCW 77.55.290). Formal appeal of actions on all other HPA types is heard by WDFW, which originally issued the permit decisions.

Of the nearly 6,200 HPA applications processed each year, WDFW receives between 30 and 40 requests for appeal of its HPA decisions. Of those, about two-thirds go through the informal appeal process outlined in WAC 220-110-340 in which WDFW staff hold hearings and render a decision regarding the appeal. The remaining one-third is processed as formal appeals through either WDFW under WAC 220-110-350, or as formal appeals through the HAB under RCW 77.55.170. In those cases routed through WDFW, administrative law judges within the Office of Administrative Hearings hear the evidence and render decisions. The WDFW Director makes the final decision whether to uphold or overturn the decision of the administrative law judge. Cases that come before the HAB are heard by members of the HAB, which is composed of representatives for the Directors of the Departments of Ecology (Ecology), Fish and Wildlife, and Agriculture. Decisions of the HAB are final and not subject to review by the Director of WDFW. For the last three years the HAB has received an average of six appeals per year.

Recommendations

We recommend that all formal appeals arising from the approval, denial, conditioning, or modification of an HPA issued by WDFW be the exclusive jurisdiction of the HAB. Given the current volume of formal appeals, this would cause an approximate doubling of the HAB HPA appeal workload, but would not result in significant fiscal or staffing impact, according to the HAB. We do not recommend any changes to the informal appeal procedures.

Accomplishing the transfer of formal appeal jurisdiction requires legislative action as follows:

- Repealing section (5) (a) and (5) (b) of RCW 77.55.170

WDFW would need to amend the following rule:

- WAC 220-110-350

Formal and informal appeal results are not currently summarized and made available to staff or the public. As a result, neither staff nor constituents are routinely informed of appeal resolutions or decisions which have the potential to set precedents.

WDFW should publish a digest of formal appeals—similar to the Shoreline and Water Rights digests. Additionally, WDFW should capture the outcome of informal appeal decisions and make the information available to the public, staff, project applicants and others. Appeal decision should be made available in a timely fashion, as they are resolved, by posting them on the Internet.

Streamlining – Technical Assistance

The HPA application process can be frustrating and time consuming for applicants. Applicants often find it difficult to correctly complete the Joint Aquatic Resources Permit Application (JARPA), which is the single application for all project types. Oftentimes applicants do not know what agency or contractors to turn to for assistance in applying

for HPAs, or conducting their projects in compliance with issued HPAs. Issued HPAs sometimes are lengthy or difficult for applicants to understand.

Recommendations

Therefore, we recommend that WDFW take the following steps to create a more user-friendly application process:

- Develop and make available examples of complete applications by project type, including potential “fact sheets” for conditions in approved applications (statement of basis - give legal authority and technical basis for terms and conditions)
- Develop “Boilerplates” for applications
- Use the Natural Resources Conservation Service (NRCS) handbook as a model for certain technical assistance
- Provide the Permit Assistance Center with technical assistance handouts to be provided to potential applicants
- Advise applicants to contact the Permit Assistance Center
- Advise appropriate applicants of the option of using the coordinated permitting process available through the Permit Assistance Center
- Consider issuing programmatic HPAs for appropriate hydraulic project types
- Compile and make available to applicants a list of experienced contractors knowledgeable of the HPA process. An alternative is to provide applicants with a list of professional organizations (such as the Association of General Contractors) that can make recommendations on specific contractors.
- Complete the integration of the Hydraulic Code relating to forest practices and the Forest Practices rules as recommended in the Forest and Fish Report

Streamlining – Inconsistent Application of HPAs

WDFW has a large staff of Area Habitat Biologists located throughout Washington that review applications and issue HPAs. Supervision of the biologists and oversight of their work is conducted by managers in each of six WDFW regions, but with ultimate oversight by the Habitat Program in Olympia headquarters office.

Currently, most biologists issue HPAs without significant review by peers, managers, or headquarters staff. Biologists make daily decisions regarding the legal authority to regulate hydraulic projects. They additionally must interpret and implement WDFW policy on habitat issues such as mitigation measures for hydraulic projects. There is not clear direction to biologists from WDFW management on the agency’s legal authority or how to implement internal policy. Because of this, inconsistencies occur in application of HPAs at multiple levels: within a single WDFW region; between WDFW regions; and between WDFW management and staff.

Recommendations

We recommend that WDFW management provide clear direction to staff regarding legal authorities and policies by addressing the following issues:

- What are the limits of the law
- What is the policy
- What are WDFW priorities
- Strive for consistency between area biologists – establish minimum requirements for training
- Improve the HPA procedural manual
- Provide consistent standards but preserve discretion of biologist for site-specific conditions
- Deviation from standards should require approval of supervisor

Streamlining – Regulatory Overlap

WDFW regulates activities in environments that, in many cases, are also regulated by other agencies. Permits issued by these multiple agencies often focus on the same habitat impacts and can add redundant requirements that increase time and cost. Looking only at HPAs cannot solve these overlaps.

Recommendations

To alleviate the burden of regulatory overlap on project proponents and WDFW staff, we recommend that WDFW take the following action:

- Address sequencing of multiple permits. Make “coordinated permitting process” work so that HPAs are issued concurrently with other permits (or as early in process as appropriate).
- Reduce time in the HPA process, but still allow site-specific considerations
 - o Create common mitigation solutions – discuss mitigation between agencies
 - o Permit by permit information sharing
- Focus the HPA program where it is most needed by using equivalent regulatory reviews and permits. Where appropriate, when other permits protect fish life, WDFW should cooperate with other agencies to avoid duplicative reviews and project delays. In certain settings and/or for certain types of actions, if other permits meet or exceed the substantive requirements of the HPA program, then the proposed project may not require an individual HPA.
- Delineate regulatory jurisdiction standards for state, local and federal government
- Establish accountability standards to assess and reduce regulatory overlap.
 - o Peer review
 - o Evaluations
 - o Quality assurance
- Conduct periodic follow-up reviews of implemented changes

Compliance

Any permitting program must contain a compliance component to be effective. Without an effective compliance program to monitor and reduce the percentage of noncompliant activities, the end result is damage to the resource being protected by the permitting program. If the regulated community is aware that compliance efforts are lacking, a

decline in the number of people applying for permits or following the conditions in the permit is likely. Furthermore, WDFW staff may find it difficult to justify issuing permits that do not result in consequences if they aren't complied with.

We find that WDFW has no clear process to implement a compliance effort for the HPA program. Area Habitat biologists report that their permitting and other workloads are so high that they have little time to assist in compliance monitoring of the permits they issue. Enforcement staff does not have clear priorities in HPA compliance monitoring.

Recommendations

We recommend that WDFW clarify the process for HPA compliance. WDFW should reorganize the HPA program into two sections: Permit Issuance and Permit Compliance.

The compliance section would need clear direction on the following points:

- A clear and standardized process for post-permit compliance
- Priority setting for compliance and monitoring determines frequency and urgency of contacts with staff and project permittees
- Staff and permittee should meet on-site for high-priority projects
 - o Pre-project and post “as-built” inspections
 - o Opportunity to provide technical assistance and education
- Compliance/Noncompliance “sign-off” letters (documentation) should be issued
- Compliance staff must coordinate with permit issuance and enforcement staff
- Noncomplying projects may require as-built permit changes
- Mitigation measures may need to be imposed
- Corrections to “as-built” project may be required
- Compliance information should be included in the HPA tracking system/data base

Violations of the Hydraulic Code are classified by statute as criminal misdemeanors and violators must be prosecuted through the county court systems with cooperation from local prosecutors. With the existing backlog of higher priority criminal cases, county prosecutors are sometimes reluctant to take on cases of Hydraulic Code violations. RCW 77.55.140 does allow WDFW to levy civil penalties of up to \$100 per day for violations, but this authority has rarely, if ever, been exercised. Existing civil authority does not include stop work orders or other administrative options, and so is ineffective.

The Task Force could not reach consensus on an approach to increased civil enforcement authority.

Training

While WDFW has initiated a training program for Area Habitat Biologists, WDFW provides inadequate training to staff responsible for writing, administering, and assessing compliance of HPAs. At times this results in inconsistent application of statutes, rules and policies; unnecessary hardship to applicants for HPAs; increased appeals of HPA actions; and insufficient protection of fish life and habitat.

Recommendations

We believe that WDFW must institute internal changes to ensure that staff is effectively trained and that communication horizontally and vertically within WDFW is improved. We recommend that a mandatory, ongoing training program for Habitat and Enforcement program staff be established and maintained. Better-trained staff would be more effective in accomplishing the goals of the HPA program. WDFW should strive for biologist and enforcement agent consistency, but should also preserve their discretion based on site-specific concerns. We further recommend that WDFW institute standard procedures that require supervisor approval for deviation from them. Finally, a quality assurance and quality control program should be implemented to ensure that training improvements are maintained.

An effective training program for WDFW staff should include the following components:

- Improved orientation for new staff
- An annual training session as well as ongoing training throughout the year

Training topics should include:

- HPA Manual
 - o Address policy, as well as procedures
 - o How to use the manual
- Legal authority boundaries
 - o What are the limits of RCW 77.55 – statute is very broad and open to interpretation
- General policy standards
 - o What is existing policy
 - o What are WDFW priorities
- Mentoring – mentors identified by WDFW supervisors as expert in Hydraulic Code implementation and effective in passing on that knowledge to coworkers
- Technology transfer
- Staff sharing experience through case studies and other methods
- Field training
- Outcomes of formal and informal appeals of HPA actions and of any court cases resulting from HPA actions
 - o A summary or digest of all appeal decisions should be compiled and distributed by WDFW or other appropriate entity. (These should also be available to the public)
 - o Changes in WDFW procedures or policies resulting from appeal decisions
- Implement training programs that will include state agencies, local governments and project proponents

Legislative or Governor Requested Topics

Fees

The Washington State Legislature has never adopted legislation authorizing WDFW to collect fees for the issuance or administration of the HPA program. Since passage of the Hydraulic Code in 1949, HPAs have been free of charge to applicants, despite significant costs associated with administering the HPA program. WDFW has estimated the HPA program, which includes field and headquarters biologists and supervisors, engineers, support staff, attorneys and enforcement personnel, to be budgeted at approximately \$10 million per biennium to administer ([Table 3](#)).

Many agencies and local government jurisdictions charge fees for permits they issue. Methods of charging fees vary, but include a filing fee for each application received, a base flat rate for each project, an hourly fee for costs that exceed the base, a percentage of the cost of the project's total value, or a sliding scale fee depending on the complexity of the project.

Because of current budget shortfalls in the state, the legislature is looking at alternatives to the general fund to help pay for the HPA program. The HPA Task Force was asked by the Legislature to make recommendations regarding a potential fee structure and schedule for HPAs. Much of the discussion of the Task Force surrounded the philosophical reasons for or against charging fees. Upon consideration of all the issues, we could not reach consensus on whether fees should be charged for HPAs. We did agree that in no case should fees be expected to pay for the full cost of administering the HPA program.

Since the Task Force was a balanced representation of the public at-large, it is not surprising that no agreement was reached on the question of charging fees for HPAs. On one hand, the citizens of the State gain significant benefit from WDFW protecting fish life by issuing permits containing measures that prevent or correct the impact of projects. It might follow, then, that since the public gains the benefit of protecting a valuable resource, the public should pay for it. Many project proponents believe that they do not gain any personal benefit from being required to obtain HPAs for conducting their work. They perceive this to be a basic fairness issue - if there is public good resulting from regulating projects, the public should pay for it, rather than project proponents.

Arguments identified by Task Force members against instituting fees include:

- Fees could be seen as rewarding inefficiencies in a system – perhaps WDFW should implement cost-saving procedures to make the HPA program more efficient
- HPAs sometimes are duplicative with other permits and applicants should not have to pay for HPAs when other permits cover most of the same elements
- Some activities are highly desirable such as habitat improvement projects – these should be encouraged, not discouraged by levying fees
- A fee-based system could decrease inter-agency cooperation/coordination and increase regulatory overlap

- Without a workload analysis model we lack information to determine costs
- Imposition of additional fees exacerbates the anti-competitive nature of Washington State
- Expectations for service increase in a fee-based program
- Large projects are often done by another government entity (WSDOT, cities, counties), so fees are just moving money from one public pocket to another

On the other hand is the argument that project proponents should pay for the full cost of issuing permits for the proper construction of those projects because public resources (i.e. fish and habitat) are being used or impacted, often for private gain.

Arguments identified by Task Force members for instituting fees include:

- The general public and small, low-growth regions would no longer subsidize the costs of reviewing and regulating construction projects that impact or harm fish life
- Fees could provide funding for needed improvements – assuming that fees should be additive to general fund money
- Fees could instill more accountability and improve the services offered
- Fees would help create a dedicated funding source to help protect fish and their habitats
- Fees would foster program improvement that would help protect our state's quality of life
- Most natural resources permitting programs in state and local government are fee-supported
- Through rulemaking that would be required, the fee proposal would be informed by additional public comment, a small business economic analysis, a commitment to annual reporting, and other parameters to help support a fair and equitable proposal

While we could not reach consensus on the question of whether fees should be charged for HPAs, we did reach conclusions on some parameters that must be considered if fees were charged. These include:

- Any fees collected should become a source of dedicated funds available only for administering the HPA program. These funds should not be diverted to the State general fund or used for other programs
- Before fees are charged, WDFW needs to demonstrate improvement in the HPA program, including a commitment by WDFW to implement the improvements recommended by the HPA Task Force (development of a concrete implementation schedule/program)
- There should be a mechanism for periodic review and WDFW should produce an annual report of fees collected
- Any fee structure should consider different types of HPAs – for example, programmatic HPAs would have a different fee structure than regular HPAs
- Increase staff accessibility and consultation to applicants prior to applying for and paying fees for HPAs

- Fees should be equitable and structured to assist with program cost recovery. The fee program should include examination of its administrative costs
- Program costs should be funded as part of a mix of funding options including fees, general fund money, cost recovery options, and efficiencies. The Fish and Wildlife Commission should involve stakeholders in the oversight of the program
- Define the activities that are fee eligible and those that are not
- An administrative accounting system will have to be implemented and this should be included when fees are considered

At the Chair's request, staff developed an example fee structure and schedule. There being no Task Force consensus on fees, the staff proposal is included in [Appendix B](#).

Stormwater

Under the federal Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) is delegated to the state of Washington for implementation. Ecology issues NPDES permits for municipal stormwater discharges, as well as for construction and industrial-related discharges. Consistent with federal regulations, Ecology will issue NPDES stormwater permits to municipalities and other regulated dischargers in two separate phases:

- Re-issuance of NPDES Phase 1 permits (originally issued in 1995 and 1999) to the 7 current Phase 1 permittees, as well as for construction activities of 5 or more acres
- Issuance of permits to all of the jurisdictions throughout the state that are required to comply with the Phase 2 regulations, as well as for construction activities of 1–5 acres

WDFW, in some cases, issues HPAs for stormwater projects in an effort to comply with its mandate to protect fish life and habitat by regulating activities that affect the bed or flow of the state's salt and fresh waters. HPAs can be effective tools to protect fish life from stormwater runoff originating from construction sites and other development sites, especially in conjunction with other stormwater management programs and in the absence of other permits. WDFW, however, was not granted explicit authority to regulate stormwater projects through the Hydraulic Code.

During the 2002 Legislative session, the Washington State Legislature passed ESHB 2866. This legislation resulted because the Legislature was "*particularly concerned over the current overlap of agency jurisdiction regarding storm water projects, and believes that there is an immediate need to address this issue to ensure that project applicants are not given conflicting directions over project design.*" Portions of this legislation restricted WDFW's authority to regulate some stormwater projects.

The issue of overlap of agency jurisdiction regarding stormwater projects is of particular interest to the Washington State Department of Transportation (WSDOT).

- WSDOT has requested, and WDFW has agreed to work on, a programmatic approach to achieve consistency with the interim stormwater guidelines resulting from ESHB 2866. This programmatic agreement would minimize the number of HPAs with

stormwater provisions issued for WSDOT projects, by utilizing components of the WSDOT stormwater management program that includes application of the Highway Runoff Manual.

- ESHB 2866 precludes HPA stormwater provisions for WSDOT projects within geographic areas covered by NPDES municipal stormwater permits. This preclusion affects current NPDES Phase I permit areas, as well as additional areas to be covered by future NPDES municipal permits issued to WSDOT.

Even though ESHB 2866 addressed the overlap of regulatory authority between Ecology and WDFW, there still is not a comprehensive statewide program to regulate stormwater discharge quantity and quality that consistently protects fish life. It is unlikely that the HPA program can fully address stormwater impacts on a programmatic level.

Recommendations

We recommend that partnerships be developed between WDFW, Ecology, and local governments that use a mix of existing programs to protect fish. WDFW and Ecology should use their technical assistance resources to help local governments achieve fish protection through their local programs.

The following actions should be taken:

- Pursuant to ESHB 2866, the Fish and Wildlife Commission should determine whether WDFW should implement the HPA program for stormwater projects.
- If the Fish and Wildlife Commission decides to exercise WDFW's HPA authority for stormwater projects above the ordinary high water line, WDFW shall undertake formal rule making to develop implementing regulations.
- WDFW should exercise its capability to assess the adequacy of local stormwater programs to substitute for the HPA in protecting fish life based upon fish protection requirements historically used by WDFW. ("Equivalency")
- Upon local government request, in accordance with ESHB 2866, and where equivalency determinations are made, stormwater actions normally subject to HPAs would no longer be required to obtain individual HPAs.
- WDFW should participate with Ecology to help local programs protect fish life.

Appendixes

Appendix A

Issues of Importance

In initial meetings, the HPA Task Force attempted to identify all the issues that are important components or problem areas of the HPA program. Although we only had time to address those issues of the highest priority, we wanted to acknowledge the importance of all of them. Future groups examining ways to improve the HPA program should consider these topics. They are not listed in any particular order of importance.

- Compliance with HPAs including monitoring and enforcement
- HPA in larger context; proprietary interests of other entities; communication with other agencies
- Stormwater
- Stable and adequate financing to achieve protection of fish habitat
- Streamline the HPA appeal process – move to one venue
- Consistency issues associated with regional permit issuance; permits are sometimes based on personal policy interpretation of the biologist
- Permit conditions imposed in HPA are inappropriate for urban/built environment
- Lack of enforcement
- Streamline whole process of applying for and issuing an HPA
- Separate permitting process for mineral prospecting, including application form
- Develop more pamphlet HPAs
- Duplication of information collected/needed – transferability of information needed for multiple permits
- Consistency of permit conditions, particularly in information needed for decision, as well as what is required
- Communication between multiple streamlining venues/models
- Public notification process for HPAs needed
- Conduct a clear, defensible HPA program workload analysis to support funding/fees
- Clarify penalties and make it more usable (civil penalties)
- Integration of HPAs with other regulations (e.g. Forest Practice Applications)
- Categorize permits by potential levels of impact
- Enhance consistency by clarifying criteria
- Develop mechanism to deal with cumulative impacts
- Assess ability of program (staffing, etc.) to administer HPAs, particularly if adding stormwater
- Avoid fees
- Fee structure to provide for immediate sustainability of the HPA program
- What kinds of ‘actions’ should not be subject to HPAs because of other permit reviews (Endangered Species Act, for example)
- Can HPA suffice for other permit reviews, in defined circumstances, to facilitate streamlining

- Rule revision to bring rules up-to-date
- Review and update the Hydraulic Code
- Database management – where kept and accessible? Record keeping
- Obligation of the State to enforce its own laws (Hydraulic code)

Appendix B

Chair's Example of HPA Fee Structure and Schedule

Table B-1. Example of HPA fee structure and schedule							
HPA Category	Number of HPAs (2000-2001 Average)	Application Fee (1)	Processing Fee by HPA Category	Total Proposed Fee by HPA Category	Fiscal Year One	Fiscal Year Two	Biennial Total
					Potential Revenue Generation	Potential Revenue Generation	
Minor	461	\$19	\$10	\$29	\$13,369	\$13,369	\$26,738
Medium	3,690	\$19	\$50	\$69	\$254,610	\$254,610	\$509,220
Major	461	\$19	\$300	\$319	\$147,059	\$147,059	\$294,118
Programmatic	75	\$19	\$35	\$54	\$4,050	\$4,050	\$8,100
Pamphlet	1,500	\$19	\$0	\$19	\$28,500	\$28,500	\$57,000
Modifications	2,644	\$19	\$15	\$34	\$89,896	\$89,896	\$179,792
Total	8,831				\$537,484	\$537,484	\$1,074,968
(1) Application fee based on combined cost of Area Habitat Biologist, database management, administrative support. Pamphlets would be free, but to be used as HPAs, the Application fees would have to be paid.							

The following are assumptions upon which [Table B-1](#) was based.

The example fee structure and schedule in [Table B-1](#) is based on a set revenue target and current numbers of HPAs issued. The number of individual HPAs issued in any given year is NOT a constant and has been in a declining trend, largely due to more programmatic-type HPAs. WDFW has no control over the number of applications for HPAs it may receive over a year. Consequently, a revenue target based on a specific fee structure and schedule may or may not be met in any given year.

Remaining Questions for Consideration:

- If fees are set in statute, will fees keep "pace" with the HPA program? Core regulatory recommendations are to streamline the process. Implementation of streamlining methods such as more programmatic approaches will reduce the overall number of individual HPAs issued, and therefore revenue generated.
- Core regulatory recommendations are to streamline the process. Implementation of streamlining methods such as more programmatic approaches will reduce the overall number of individual HPAs issued, and therefore revenue generated. Any revenue target and fee structure/schedule should be flexible enough to accommodate decreasing numbers of HPAs over time.
- Will generated revenue be dedicated back to the HPA program? If so, what should the fees be directed to address?
 - Existing services and staff
 - Improvements to service including monitoring, compliance and database integration
 - Future maintenance of services
 - Other

Assumptions of Fee Structure and Schedule ([Table B-1](#)):

Number of HPAs: Since 1997, the average number of HPAs issued has declined by nearly 35%. This decline is due in part to the Gold & Fish Pamphlet and the development of more programmatic HPAs. The example revenue generation scenario is based on July 1, 2001 through June 30, 2003 numbers of HPAs, reduced by 1,000 to account for future generation of programmatic-type HPAs and corresponding decline of individual HPAs. The number of programmatic-type HPAs is the number anticipated for completion each year. About 10,200 pamphlet HPAs (Gold & Fish, Aquatic Plants & Fish) have been distributed annually. We estimate that 1,500 of these were used as permits.

All pamphlet HPAs are also technical assistance documents and many are distributed by clubs and vendors as informational brochures that are never used as permits. Prior to the 1999 Gold and Fish pamphlet revision, there were 350, 450, 550, and 850 individual mineral prospecting applicants in 1994, 1995, 1996 and 1997, respectively. We will need to either develop a separate technical assistance document for no charge, a one-page "permit" for a charge to go with the existing pamphlets, or revise the pamphlets.

Pamphlet revision requires rule adoption.

The example scenario presumes fee submission/collection is based on the existing licensing system (WILD) for hunting and fishing licenses, and uses the framework already established, with some level of system modification to accommodate HPA fees. Funding for system administration of HPA fees is included in the fee structure of the example. RCW 77.32.050 appears to limit transaction fees to recreational licenses. This will require additional research and discussion, and may require modification of the RCW to ensure the administrative cost of HPA fee collection is authorized.

The example scenario presumes the fee is paid up-front in total, and that proof of payment is submitted with the application. This eliminates cash transactions with field staff, and administrative issues associated with fee collection after the application is submitted and processed. On-line transactions from application to permit issuance will require software and hardware updates, programming to integrate application receipt, fee payment, database and HPA issuance, including security. Funding is needed to do this.

Under the example scenario, certain activities are proposed to be exempt from fees: Fish habitat enhancement projects pursuant to RCW 77.55.290 and emergencies pursuant to RCW 77.55.100 and 77.55.110. For the 01-03 Biennium, these activities represented about 4 percent of all HPAs issued (approximately 340 HPAs). It may be appropriate to exempt other, or different, activities from fees. Potential fee exemptions should be fully discussed, both within the agency, and with stakeholders.

For simplicity and until other aspects of the HPA program (as identified above) are in place, the example scenario presumes one fee is collected which is a combination of a flat application fee, plus a graduated application processing fee. The application fee is a flat fee regardless of processing complexity and is for the administration costs of fees and HPA processing. The processing fee is a graduated fee based on project complexity (minor, medium, major, programmatic), which is a determining factor in the amount of time needed for staff to review the application and write the HPA.

HPA Categories, Average Processing Time, and Example Activities:

The following list of potential activities by category (minor, medium, major) is for example purposes only. It is based on an initial review of activities requiring an HPA based on project complexity, risk to the resource and project review time. It is not all-inclusive and has not been thoroughly discussed either internally, or with stakeholders. It is recommended that discussions to fully flesh out category criteria and resultant activities take place as part of any approved fee structure/schedule development. For purposes of the example scenario, the following was used:

Minor: Low-risk and involve few or no discussions between the applicant and the department and typically one or no field visits. Approximately 10% of all HPAs. Average application review time ranges from 1-3 hours. Some examples of what might be a minor project include:

- Re-vegetation;
- Any work conducted solely with the use of hand or hand-held tools;
- Aerial conduit installation, removal or repair;
- Conduit installation using boring;
- Dredging less than 50 cubic yards of bed material, exclusive of saltwater habitats of special concern as specified in WAC 220-110-250;
- Bridge or culvert removal or placement in non-fish bearing waters;
- Bridge painting;
- For projects not qualifying for processing under RCW 77.55.290:
 - Bank protection of less than 100 linear feet using bio-engineering techniques, which may incorporate less than 50 cubic yards of rock, but no concrete or other man-made materials; or
 - Remote site egg incubator placement or removal;
- Single-family residential dock or non-grounding float removal, replacement, or maintenance within the existing footprint;
- Repair or maintenance of boat ramps or launches not to exceed 25 percent of the existing footprint, or to result in an increase in the vertical height of the existing ramp or launch;
- Removal or replacement of 18 or fewer pilings;
- Felling and yarding activities associated with an approved forest practice application;
- Maintenance or repair of single-family residential bulkheads, not to exceed 25 percent of the total length of the existing bulkhead, or to result in additional waterward encroachment;
- Temporary or permanent stream gauges installation or removal that does not include instream construction work;
- Installation or removal of livestock watering areas for farms of 10 acres or less;
- Installation or removal of pumps for diversions of one cubic foot per second or less;
- Installation or removal of booms;
- Temporary ford installation, use and removal. Temporary means in place for less than one year;
- Installation or removal of anchoring or mooring buoys, exclusive of saltwater habitats of special concern as specified in WAC 220-110-250;
- Installation, removal or maintenance of navigation aids.

Medium: Moderate complexity, and involves several discussions between the applicant and the department and at least one field visit. Any project that is not a minor or a major project falls into this category. Approximately 80% of all HPAs. Average application review time ranges from 3-6 hours. Examples of what might be a medium project include:

- Bridge or culvert installation or removal in fish-bearing waters;
- Mechanical aquatic plant control not addressed by the pamphlet;
- Most shoreline modification or bank protection projects;
- Conduit line installation or removal using trenching.

Major: Typically complex, often multi-jurisdictional, and involve extensive discussions between the applicant and the department, and multiple meetings and field visits, and have the potential for significant impacts to fish life. Approximately 10% of all HPAs. Average application review time ranges from several weeks to several years. Examples of what might be a major project include:

- Transportation projects of statewide significance;
- New marinas, jetties or dikes;
- Channel realignments in fish-bearing waters;
- Gravel removal or dredging of more than 2,000 cubic yards of bed material in marine waters or 500 cubic yards in fresh waters;
- Cross-state or cross-jurisdictional conduit line crossings, including stormwater and sewer outfalls;
- Dams not under the jurisdiction of the federal energy regulatory commission;
- Fish passage barrier removal with replacement, or retrofit (e.g. baffles or log controls for passage through or over a structure);
- Fish screening devices for diversion of more than one cubic foot per second;
- New over-water structures or the repair/replacement of more than 25 percent of an existing over-water structure. This does not include over-water structures for single-family residents;
- Filling of fish accessible wetlands or fish-bearing waters.

Programmatic-type HPAs: These are typically for routine, low impact activities, but because they are for broad geographic areas, they take more time to process than an individual HPA. It is a short-term, up-front, but time-intensive effort, for long-term permit streamlining.

Modifications include time extensions and other provision changes, as well as renewals of expired HPAs that have not met the 5-year statutory time limit for HPA issuance.

Pamphlet HPAs are a programmatic-type HPA that includes specific conditions that must be followed, plus technical information. The conditions are adopted as rule. Pamphlet HPAs require specific legislative authority.

Fee Implementation Assumptions:

There is a time lag between the effective date of any fee legislation and actual fee collection. We estimate this time lag to be at least one year, in order to address the following, and to gradually reach the desired revenue target. It is presumed that the revenue target will not be reached in the 03-05 biennium. Issues that need to be addressed:

- Modify the existing licensing fee-collection system to accommodate collection of an up-front fee for HPAs. Actual fee collection and billing system that complies with legal, audit and accountability requirements must be developed. This includes a

process for refunds and non-payment.

- Develop, in consultation with constituents, specific criteria for and the associated activities that are appropriate for the different project categories (minor, medium, major and programmatic), as well as other potential fee exemptions (if given that authority by the legislature).
- Conduct any necessary rule development to implement fees, if fees are not specifically set in statute. Rule development will require at least 5 or 6 months once the CR101 (Notice of Intent to Adopt Rules) is filed. More time is needed if consensus on the fee structure and schedule is difficult to reach through the public process ([Table B-2](#)). Fees set in statute may not keep "pace" with the HPA program.
- Inform the public of the fee requirement and collection process.
- Train staff regarding fee collection requirements.

Table B-2. Time Line for Fee Rule Adoption

Days to Complete									
??? Days	14 Days	44 Days	3 Days	30 Days	7 Days	??? Days	??? Days	14 Days	31 Days
Conduct workshops with stakeholders to develop proposed rules. Develop: (1) Cost/Benefit Analysis (CBA) (2) Significant Legislative Rules Analysis (SLRA) (3) Small Business Economic Impact Statement (SBEIS). Number of days needed will vary depending upon the topic for rule development and available resources.	File and Publish CR 101 (Statement of Inquiry – Notice of Intent to Develop Rules) in State Register. Publication is 14 days after filing and publication dates are pre-set.	File CR 102 (Notice of Proposed Rules) in State Register. Filing is no less than 30 days after CR 101 is published. CR 102 is published 14 days after filing and publication dates are pre-set. SBEIS, CBA, SLRA, and proposed rules filed with CR 102.	Written Notice/Statement to Stakeholders is sent to stakeholders within 3 days of publishing CR 102. Notice includes copy of SBEIS, CBA, SLRA, and proposed rules filed with CR 102.	Hold Public Comment Hearing no less than 30 days after Written Notice/Statement to Stakeholders is sent. Conduct SEPA on proposed rules prior to Public Comment Hearing – requires no less than a 14-day period provided a Determination of Significance is not made and an Environmental Impact Statement is not required.	Required Public Comment Period - typically for 7 days following the Public Comment Hearing.	Public Rule Adoption Hearing after the Public Comment Period ends. Rule adoption is by the Fish & Wildlife Commission at pre-set hearing dates. Number of days between the comment period and the adoption hearing will depend upon the F&W Commission pre-set hearing/ workshop schedule.	Develop: (1) Concise Explanatory Statement (2) Response to written public comments received. Number of days will vary depending upon the number of written comments received.	File and Publish CR 103 (Adopted Rules) in State Register. CR103 is published 14 days after filing and publication dates are pre-set.	Rules become effective 31 days after filing.